

**REMARKS**

The Office action dated February 9, 2005, and the references cited have been fully considered. In response, please enter the amendments presented herein and consider the following remarks. Reconsideration and/or further prosecution of the application is respectfully requested. No new matter is added herein. The amendments made to the claims will be discussed hereinafter in conjunction with their respective claim sets.

Applicants appreciate the Office's consideration of the submitted references and the return of the signed and dated 1449 indicating such. Note, Applicants have filed an IDS concurrently with this response, and remind the Office that this application is a CIP of US Application No. 09/752,422, filed December 31, 2000, and currently pending, with the electronic file wrapper available to the Office. Applicants would appreciate the Office returning with the next Office action, the corresponding 1449 signed and dated to indicate the Office's consideration of the cited references.

Applicants appreciate the notification that claims 10-15 and 22-30 are allowed.

Applicants appreciate the Office action identifying the typographical errors in claims 31 and 32. As such, applicants have amended claims 30-32 to reflect that, in one embodiment, the first, second and/or third elements are switching elements, with support for these amendments provided by the original filed disclosure such as by FIGs 3A-3C, FIGs. 4A-E and their corresponding discussion on pages 16-23. As such, Applicants respectfully request the objections to claims 31-32 be withdrawn.

In terms of the claim rejections based on prior art, claims 1-9 and 16-21 stand rejected as being anticipated by Dally, US Patent Application Publication No. US 2001/0033569. Applicants respectfully traverse these rejections for at least the reasons that Dally neither teaches nor suggests all the claim limitations.

As this application has been pending for an exceedingly long duration, Applicants have elected to amend some of the rejected claims to more clearly represent one embodiment illustrated by FIG. 8D and its corresponding discussion, which is clearly allowable over the prior

art of record. And if the Office action complies with MPEP § 706 and 37 CFR 1.104(c)(2), then the Office cited the best prior art references available. As the prior art of record neither teaches nor suggests all the claim limitations of the pending claims, then all pending claims are believed to be allowable over the best prior art available, and Applicants request the claims be allowed and the application pass to issuance.

For anticipation under 35 USC § 102, the reference *must teach each and every aspect of the claimed invention* (including transitional limitations e.g., "in response to", "after", etc.) either explicitly or impliedly, and the burden is on the Office to present a *prima facie* case of anticipation. MPEP § 706.02. Inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*).

For obviousness under 35 USC § 103(a) requires "the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." MPEP § 706.02(j) (*citing In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991))(emphasis added). And, the burden is on the Office Action to establish a *prima facie* case of obviousness.

In order to meet these burden, the Office must at least present a rejection for each and every claim limitation, *with these limitations being construed in light of the specification*; all of the presented rejections for a claim must be used in a consistent and as a whole cohere; and the application of the reference(s) must teach the claim limitation to which it is/they are applied.

Applicants have amended independent claims 1 and 16 to reflect one embodiment illustrated in FIG. 8D (especially process blocks 846, 854, and 856) (with support for these amendments at least provided therein and on page 34 of the original disclosure), which repeatedly keeps sending the same set of data (e.g., the current state of the flow control information) using different barrier phases. Additionally, dependent claims 2 and 16 are amended to conform with the terminology of amended claims 1 and 16. Additionally, dependent

claims 4 and 19 are amended to recite that the data comprises flow control information, with support provided by original claims 4 and 19 and through-out the original filed disclosure. Additionally, claim 6 is cancelled as the terminology of independent claim 1 was updated. Furthermore, original dependent claim 9 was a dependent computer-readable media claim which depended from claim 1, with claim 9 being canceled herein, and re-written in independent form as independent claim 33, with its limitations corresponding to amended claim 1. Additionally, dependent claims 34-36 are added herein, which directly correspond to computer-readable media claim format of pending claims 2-4, with support provided at least by those claims

In contrast, Dally et al. teaches a mechanism for updating a digital cross connect system with a new configuration to switch SONET frames. Dally et al. neither teaches nor suggests the use of barrier phases. The PTS signal identifies to the various switching a next configuration to use. The propagation of the foretelling of a next switching configuration, nor a current switching configuration, neither teaches nor suggests a barrier phase as defined and construed in light of applicant's disclosure. Moreover, claims 1 and 16 recite that the possible barrier phases consists of two different barrier phases, and Dalley et al. neither teaches nor suggests only two possible switch configurations. For at least these reasons, independent claim 1 and its dependent claims 2-5 and 7-8, independent claim 16 and its dependent claims of 17-21, and independent claim 33 and its dependent claims of 34-36 are believed to be allowable.

All of the other pending claims have been allowed by the Office action.

In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over the prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney.

Applicants believe that no extension of time is required; although, the Commissioner is hereby generally authorized under 37 C.F.R. § 1.136(a)(3) to treat this communication or

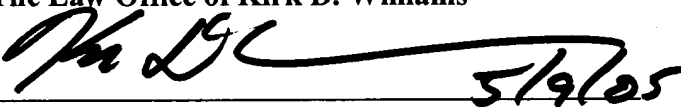
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Amendment A

any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 requiring an extension of time as incorporating a request therefore, and the Commissioner is hereby specifically authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time. Moreover, the Commissioner is hereby authorized to charge payment of any fee due any under 37 C.F.R. §§ 1.16 and § 1.17 associated with this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 or credit any overpayment to Deposit Account No. 501430.

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Respectfully submitted,  
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By



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